

Resource Management Plan Program FAQs

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Contents

Certainty.....	3
District Role/Responsibility	5
TRC	7
Process	11
Compliance	14
Minimum Standards/Buffer Requirements	15
Funding, RMP-1, and RMP-2 practices	17
FOIA/Privacy/Information Accessibility	20
RMP Developer	21
Modules	22
Other	23

***Yellow highlighted text indicates additional questions or revised responses to a previous FAQ document distributed in September 2014.**

Certainty

1. Will RMP compliance be based on 2014 requirements (i.e. Nutrient Management, conservation plan, TMDL, etc.) or change over 9-year (safe harbor) period?
RMP compliance will be based on requirements in place at the time of issuance of a certificate of implementation. During the resulting 9-year safe harbor period, there should be no reason to change the standard to which the conservation plan was written or to address any changes to TMDL regulations. The nutrient management plan, however, must remain current and valid and program changes would need to be reflected in the NMP. Nutrient management plans have a 1-3 year lifespan.
2. Will NMP's be valid for 9 years?
No. In order to remain compliant with an RMP, the NMP must remain current and valid throughout the 9-year safe harbor period. Every nutrient management plan has a lifespan of 1-3 years and must be revised to remain current throughout the 9-year safe harbor period.
3. If all or a significant part of the property with the RMP is converted to residential use and local regulations are tougher than the existing RMP, will the "farm" be exempt from local regulations regarding E&S, tree cover, stream protection, etc.?
What will be done to evaluate potential loopholes this creates?
The RMP is designed to cover agricultural cropland, hayland, and pasture operations, but not residential landuse. None of the protections granted for fully implementing the RMP would convey to land development. If an area is developed it must meet the state and local E&S and stormwater regulations.
4. After the 9-year safe harbor will original practices be "grandfathered", such as the original buffer being 35' but new requirement is 100'?
Once a Certificate of Implementation has expired, the new requirements of any associated TMDLs, state requirements or minimum standards will need to be addressed in a new RMP before a new Certificate of Implementation can be issued.
5. When is a new farm eligible for an RMP? If there is a newly converted farm...land conversion for ag purpose..., when are they eligible? Is there a need to establish a farming history first?
There is not any time requirement (waiting period) for RMP Program participation and eligibility to receive a Certificate of Resource Management Plan Implementation. However, the provision of cost-share for plan development and BMP implementation is based on the Virginia Agricultural Cost-Share (VACS) BMP Manual procedures that stipulates that "[i]n order to be considered agricultural land [and to be eligible for cost-share], the real estate must consist of a minimum of five contiguous acres and there must be verifiable gross receipts in excess of \$1,000 per year from the production or sale of agricultural, horticultural or forest products produced on the applicant's agricultural land for each of the past five years".
6. When does "safe harbor" actually begin; when the plan is signed, or when the last planned BMP is installed?
The nine years of "safe harbor" begins on the date the Certificate of Verification is issued. Certificate issuance is contingent on verification by the review authority that the BMPs in the RMP have been fully implemented.

7. If a producer is doing all the components of an RMP, what is the point of safe harbor?
The program can give a level of certainty to the producer in knowing that if the state requirements change, he will have a period of time, the remainder of his “safe harbor” (certainty), before he needs to implement those new requirements.
8. Why is safe harbor so important for producers who are implementing the practices but don’t have an approved RMP?
See answer provided above.
9. There needs to be a better carrot than ‘safe harbor’ if it doesn’t protect a producer from the Chesapeake Bay Act or federal (EPA) regulations. What better carrots do you have?
Participation in the RMP program:
- *Provides producers with “Certainty” from new Chesapeake Bay WIP or local TMDL regulations for nine years.*
 - *Provides a comprehensive approach to determine the best conservation practices for each farming operation.*
 - *Provides credit for implementing practices that protect water quality.*
 - *Shows farmers as “good actors;” helps stave off future regulations.*
 - *Provides decision makers better data to determine funding needs for cost-share and other incentive programs based on BMP needs specified in the producers RMP.*
10. At the end of the 9-year cycle, if the site is still at T, how are extensions handled? Is a whole new plan required to be written or can the plan be extended?
The RMP Certificate of Implementation has a 9-year lifespan. If there are no new requirements to be addressed and no RMP plan revisions needed, the owner/operator may apply for a new Certificate of Implementation.

District Role/Responsibility

11. Can the District charge? (for plan development)

*In accordance with Appropriation Act language, Districts are authorized to charge for their services. "Soil and Water Conservation Districts are hereby authorized to recover a portion of the direct costs of services rendered to landowners within the district and to recover a portion of the cost for use of district-owned conservation equipment. **Such recoveries shall not exceed the amount expended by a district on these services and equipment.**"*

12. Is the review and inspection conducted by the same people and who? (i.e., District staff or DCR or both).

The RMP plan review and verification inspections are conducted by the review authority. The review authority is normally the District unless the plan was developed by a staff member or director of the District, in which case such responsibilities shall fall to DCR.

13. Do you have any standards for DCR's review of the district's handling of the authority components?

DCR shall periodically conduct a comprehensive review of the RMP duties performed by each District to evaluate whether requirements set forth in the regulations have been satisfactorily fulfilled. Procedures for this review are being developed.

14. Can a district review an RMP from another district and vice-a-versa?

The District in which the RMP is located must review the RMP unless they developed it, in which case, DCR must review the RMP. The District can develop RMPs outside of their District boundary and the District in which the RMP lies must review it.

15. Is it allowable for District (A) to review plans received in District (B) when staff of District (B) wrote the RMP?

No, a District cannot review an RMP on a land management unit in another District. A District might consider some type of arrangement with an adjoining District for staff to write plans in another District, allowing the District board to review plans for RMPs submitted within their own service area.

16. May a District exchange or pass off the plan review/approval authority to another District? For example, can District (A) review/approve RMPs for producers from District (B)?

No, a District cannot review an RMP on a land management unit in another District.

17. What is the role of the local District in certification of its employees?

The District should ensure staff involved in the RMP program are proficient in their assigned duties. Those staff members should become familiar with the RMP module and RMP policies and procedures. TRC members should attend applicable training offered by DCR.

18. Does the District board accept or deny the technical review committee's recommendation of the RMPs? What are the responsibilities of the District Board?

The TRC provides recommendations to the District Board. The Board's actions can be independent of the recommendations. The Board may also delegate RMP approval to an authorized individual who would approve the RMP outside of a formal Board meeting.

19. If the SWCD's review authority is delegated to an individual, must the District still have a TRC?
Yes. RMP regulations require each soil and water conservation district to establish a Technical Review Committee (TRC). The TRC must review the plan and provide a recommendation to either the District Board or to the delegated authority. Only the SWCD Board's authority to approve or deny RMPs can be delegated.

20. Must delegated review authority be a member of the TRC?
Delegated plan approval authority may not be to a member of the TRC.

21. There seems to be a conflict between language in the TRC grant agreement and later instructions provided regarding delegation of authority. The TRC grant agreement states that "The District Board shall determine whether they will be the Board of Record for District decisions regarding any or all authorized RMP actions or whether they will delegate any and all authority to an authorized District representative serving on the TRC...". The Attorney General's Office stated that delegated authority should not be a person serving on the TRC; that having a person make a case decision regarding his own recommendation would be a conflict of interest.

Response: Delegated authority should not be a person serving on the TRC. Opinion from the Attorney General's office was provided after the grant agreement was sent out.

The following bullet points should provide further clarification regarding the TRC and delegation of authority.

- There must be a TRC*
- The job of the TRC is to make a recommendation to the Board or delegated authority regarding plan approval or non-approval*
- The task of making a recommendation can only be accomplished by the TRC. The task of plan review and recommendation for approval cannot be delegated to an individual.*
- The District Board may choose to delegate authority for plan approval, but the TRC must still make the recommendation*
- Delegated authority must be a qualified District Director, Associate Director, SWCD staff member, or other agent of the Board.*

22. Regarding inspections, will the District be responsible for tracking when inspections are due or will DCR "remind" the District and "assign" inspections similar to spot-check assignments?
The review authority is responsible for scheduling inspections.
It is intended that the computer module will have the ability to notify Districts when periodic inspections are upcoming.

23. How much of a workload increase, over present conservation technician's workload will the RMP require?
We are unable to answer at this time; however, DCR will strive to implement the RMP Program in coordination with the current VACS Program in order to moderate additional responsibilities associated with the delivery of this important Program.

TRC

24. Is there any guidance on how a district's review committee should work?
Procedures, forms, and training explaining the operation of the TRC are being developed.
25. What technical requirements need to be possessed by members of the technical review team of a RMP?
While there are no certification requirements for members of the TRC, the TRC needs to include members who are competent in the requirements of the RMP program including nutrient management and soil conservation.
26. What training is needed for members of the "TRC"? Do they need the training before acting on the committee or within a certain amount of time?
While there are no certification requirements for members of the TRC, the TRC needs to include members who are competent in the requirements of the RMP program, including nutrient management and soil conservation. Training for TCR members will be provided by DCR staff.
27. What are the criteria for the review committee at the SWCD? If no one at the district is a certified NMP, shouldn't the review committee have some sort of certification?
The SWCD TRC members need to have the necessary skill set to determine if a plan meets the nutrient management and other RMP requirements.
28. Does everyone in attendance reviewing a RMP need to be a conservation planner?
No.
29. Do District employees who review and approve plans need to be a certified plan developer?
No, the District TRC members do not need to be certified as plan developers, but they need to have the necessary skill set to determine if a plan meets the nutrient management and other RMP requirements.
30. Is it required or mandatory that a TRC have a certified nutrient management planner included as a member of the committee?
*No, it is not required but suggested. The fact sheet uses the term "should".
Ideally there would be a certified nutrient management planner on the TRC, but it is not mandatory.*
31. What if a local District staff/review committee does not have the (job) approval authority or experience/knowledge to insure/certify that the practices meet technical/engineered (NRCS) standards?
BMP technical/engineering review would be conducted by the entity that provided the design (NRCS or DCR) if the practice is funded through a cost-share program. For voluntary practices, either the District or DCR would have the responsibility to evaluate the BMP implementation. If the District does not have qualified staff, they can recruit outside technical expertise to assist them. To fill the void in engineering technical assistance to Districts, DCR is seeking to acquire engineers who can provide such assistance to them.

32. Can a District staff member serve as chair of the TRC?
Yes. A TRC will function as other District committees. There is nothing to prohibit a staff member from serving as Chair on any committee, unless individual District policy prohibits.
33. Can a District staff member from one District serve on the TRC of another District?
Yes, a District staff member may serve on the TRC of another District. However, if the member is the developer of an RMP, they should recuse themselves from participating in any discussions or votes on that RMP.
34. What happens in a case in which a District staff member wrote the nutrient management plan or the conservation plan associated with an RMP? Or designs a BMP associated with an RMP?
The conservation plan and/or nutrient management plans are components of the RMP. The District may conduct a plan review process for an RMP containing components written by their own staff or for an RMP that includes a BMP that has been designed by their own staff. It is the actual writing of the RMP that is precluded.
35. If a TRC member (either Extension Agent w/ Nutrient Management Planner Certification or District staff member w/ Nutrient Management Planner Certification) wrote the Nutrient Management Plan that is a part of the RMP, does that effect whether or not the District can review the RMP (Note: The TRC member did NOT write/develop the RMP, just responsible for writing the related Nutrient Management Plan.)? Would the District have to send this RMP to DCR for review?
No, the preclusion is limited to the writing of the RMP.
36. If a TRC member wrote the nutrient management plan or the conservation plan, can the District review the RMP?
Yes. Additionally, the individual who developed the NMP or soil conservation plan CAN also sit on the TRC as long as they are NOT the RMP developer of record. However, ideally, anyone would abstain from voting on the evaluation of their own work. Ultimately, this should be determined by individual District policies.
37. If a person who wrote the CP or the NMP is on the TRC (they wrote either the Conservation Plan and/or the NM Plan, but did not write the total RMP), do they have to abstain from any of the discussion or vote in order to avoid any type of COIA perception?
Ideally, anyone would abstain from voting on the evaluation of their own work. However, if the individual did not write the RMP itself, this is less of a concern. Ultimately, this should be determined by individual District policies.
38. If a TRC member writes the Nutrient Management plan or Conservation Plan, but not the full RMP, can the SWCD review the RMP?
Yes. The conservation and/or nutrient management plans are only components of the RMP. A District may conduct a plan review process for an RMP containing components written by a member of the TRC. That TRC member needs to abstain from voting.
39. If a TRC member (not a Director or Associate Director) writes an RMP, can the SWCD review the RMP?
Yes. The District can conduct a plan review for an RMP written by a member of the TRC, as long as it is not an SWCD employee, Director, or Associate Director. That TRC member, however, needs to abstain from participating in the TRC review process for the plan that he created or voting on a recommendation.

40. If an associate director wrote an RMP can the SWCD review the RMP?
No. If an Associate Director writes an RMP for an operation within boundaries of the SWCD which he/she serves, DCR must become the review authority for that plan. The opinion of the Attorney General's Office is that an Associate Director is affiliated with an SWCD Board, just as an SWCD employee would be. Allowing a TRC to review plans written by an Associate Director would be a conflict of interest.
41. Do Districts need their Technical Review Committee setup before May training?
No. Establishment of the TRC prior to May 2014 trainings would be ideal, but a District Board may appoint members to committees at any time, according to their individual District policy.
42. Do all Districts have to form TRC's for RMP's in addition to existing committees (i.e., Ag, etc.) within the Districts?
Districts are required to have a TRC. TRC duties, however, could be performed by an existing committee if the existing committee includes members competent in the requirements of the RMP program. For example, a District with an Agriculture committee could appoint members of the Agriculture Committee to the Agriculture/TRC committee.
43. Can DCR Nutrient Management planners serve on the TRC?
Yes, but they are not required to do so. Their participation will be dependent on their individual workloads.
44. Can NRCS staff serve on the District's TRC?
Yes, but they are not required to do so.
45. Will NRCS staff with their workload and current relationship with Districts be authorized to serve on TRC?
DCR cannot make this determination for NRCS. As noted above, there is no preclusion in state law or regulations regarding NRCS participation.
46. Do employees count towards quorum of a TRC?
It depends. If SWCD staffers are appointed to a committee, then they make up the constituent membership of the committee and therefore count toward the quorum as per the definition of a meeting in § 2.2-3701.
47. Do non-voting advisors (such as NRCS staff) count towards quorum?
According to the FOIA council, FOIA does not distinguish between voting and non-voting members; it just says "members." If the advisors are in fact members, then yes, they count toward the quorum.
48. **Must there be a quorum for TRC meetings?**
The TRC may meet and discuss the RMP without a quorum, but the committee cannot take any action without a quorum. Because the determination to make a recommendation of approval or rejection of the RMP is considered an action, it is necessary for the TRC to have a quorum to make its recommendation.
Additionally, FOIA recognizes informal assemblages (i.e., no official action is taken) as meetings. If three members or a quorum are present, it is required that there is public notice of the meeting.

49. May a TRC develop an RMP-submittal policy?

A TRC may develop a policy as long as the policy does not conflict with RMP regulations.

50. Is this module being developed to produce certain outcomes leaving TRC to act only as a rubber stamp?

No

Process

51. Should the landowner get an RMP or should the individual farming the land get the RMP if he is not the landowner? Who exactly gets the safe harbor?
The owner or operator can get the RMP and safe harbor.
52. Who specifically certifies that all practices have been installed – prior to DCR issuing a certificate?
Once the owner or operator has implemented all BMPs included in the RMP, the RMP plan developer shall confirm that he has done so. The owner or operator will then request the implementation verification inspection be done by the review authority.
53. Shouldn't the RMP developer contact the TRC to conduct an inspection instead of having the owner having to do it to minimize confusion?
Regulations dictate that the owner will request the inspection.
54. How much time does DCR have to issue a certificate after (the) review authority verifies implementation and requests?
The regulations are silent on this time period; this will be addressed in DCR Program implementation procedures.
55. Who from DCR will be notifying the farmer after inspection deficiencies are found?
DCR Program implementation procedures shall specify who is authorized within DCR to issue the written notice.
56. What happens when/if a TRC or District Board does not agree with plan developed by a certified RMP planner (developer)?
The District is the review authority and makes the final decision. The plan developer could revise the plan or seek an appeal in accordance with appeal procedures.
57. If Districts are the review and approval authority, can we reject the plan if it does not properly address the local ordinances, state laws, or Farm Bill requirements?
The TRC must review the RMP based on the required components and minimum standards of the RMP regulations; however, the District can notify the owner/operator of any other requirements not addressed by the RMP.
58. Can a District not approve an RMP because the applicant does not have a required Bay Act Plan?
No. Although there are some similarities between an RMP and a Bay Act plan and there is a possibility that an RMP plan could satisfy the requirement for a Bay Act plan, the RMP regulations make no reference to Bay Act plans or local plan requirements. A TRC should review RMPs and District Boards should approve or deny an RMP based solely on whether the RMP fully meets the minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50.
59. What happens if the TRC or DCR does not meet the 90 day (new) or 45 day (resubmitted) requirement? What relief is there for the owner?
The regulations are mute on this point. The law and regulations do not automatically deem plans approved if the 90 or 45 day deadlines are missed as with some other regulations.
60. What happens to the RMP if done on rented or leased land and operation loses control of said farm or tract? "Transfer process of RMP" when owner or operator status changes.

There is a transfer process for an RMP and any associated Certificate of Implementation. When owner/operator changes, the new owner/operator may either:

- 1) Transfer, maintain, and implement the existing RMP;*
- 2) Revise the RMP to reflect changes; or*
- 3) Choose not to implement the RMP, resulting in loss of Certification.*

61. If deficiencies are found by a District in a RMP – does the landowner go back to whoever developed the plan? Does the District give technical advice to correct?

Deficiencies in a plan submitted for review or in implementation would require the landowner to request that the RMP developer either revise the plan or submit a Corrective Action Agreement. The District may give technical advice to correct.

62. If a farm operation exists in two Districts, can one District (as its employee) write the plan and the other District review the plan?

No. Each TRC will review the portion of the plan applicable to their District. Specifically, it should be noted that the regulations specify that “[i]f an RMP is located within multiple soil and water conservation districts, each TRC will review the portion of the plan applicable to the management unit within their district, either in consultation or independently of each other. The soil and water conservation district with the largest amount of acreage under the RMP has lead responsibility for (i) coordinating the review among multiple districts; (ii) resolving disputes; (iii) corresponding with the owner or operator and RMP developer regarding the RMP review; and (iv) when appropriate, submitting required documentation to the department to support issuance of a Certificate of RMP Implementation.”

63. Should an RMP plan developer attend TRC plan review meetings?

It could be beneficial for the plan developer to attend the meetings, although, there is no requirement that the plan developer attend and the TRC cannot require that the plan developer attend.

64. How should documents related to RMP plan review and approval be processed and filed?

At TRC Committee meetings, redacted RMP review packets with a cover sheet will be provided to the TRC for plan review, but only provided to members of the TRC. Plan review packets should be collected by staff at the end of the TRC committee meeting and destroyed or placed in an appropriate location to ensure that privacy provisions are maintained. The RMP plan itself can be provided to the District Board for approval, but should not be included in Board meeting packets made available to meeting attendees who are not members of the Board. The RMP should not be filed with Board meeting packet attachments or any other files that may be seen or requested by the public. The redacted Plan Review Checklist can be provided to the Board, included in Board meeting packets, and a copy filed with Board meeting packet attachments. Original, signed, hard copies of the RMP plan and plan review checklist should be filed in a separate file (not with other conservation plans or BMP files) and in a location that is not accessible to the public. This filing process may change once the computer module is implemented.

65. Can TRC members or staff bring a packet to the Board meeting?

Yes, the RMP review packet can be brought to the District Board meeting, as long as the applicant’s information is protected from non-TRC members. TRC members and all Board members may see the packet. As draft FOIA guidance suggests, the packet should be redacted of personal and proprietary information as this material is being provided in an open meeting.

66. Can a District employee conduct a completeness review and, if not complete, send the RMP back to the developer prior to TRC review?

Yes. If a required plan component is not included, the staff member may correspond with the plan developer to request the missing component(s).

In this case, the staff member must “reject” the plan in the module. Rejecting the plan puts the plan back into the development phase and allows the plan developer to make additions or edits.

It is suggested that the staff person include comments such as “A completeness review conducted by (staff name) on (date). The following components were missing from the submitted plan.”

The TRC has 90 days following submittal of a complete plan to review the plan.

67. What is the scope of the completeness review?

A completeness review is conducted to determine that each required component of the plan is included. A completeness review is not a review of the quality of the submission or for plan deficiencies. TRCs will review the quality of the plan and comment on plan deficiencies.

Compliance

68. For an RMP reflecting a Nutrient Management Plan on hayland, does the farmer have to apply all the nutrients and lime called for in soil tests for a nutrient management plan in order to be in compliance, or could they apply less (for financial or other reasons) and still be in compliance?
Generally, the application recommendations contained in the NMP are the maximum recommended rates. The certified nutrient management planner developing the NMP should consider other agronomic factors, such as low soil ph, when determining the yield goals and making the nutrient recommendations, and make adjustments accordingly. A nutrient management plan must have recommendations for lime applications if the soils test indicates the need.
69. Once a plan is completed and submitted for review, what are (if any) future responsibilities of the planner if the producer is found to be out of compliance during a future inspection?
The RMP developer makes a determination that the RMP has been fully implemented prior to the review authority verification inspection. The RMP developer is involved in making the determination if changes to the operation require an RMP modification. The RMP developer is again involved if a verification inspection reveals the need to develop a corrective action agreement.
70. Will DCR notify the plan developer of deficiencies in order for the plan developer to draft a Corrective Action Agreement (CAA)?
Yes.

Minimum Standards/Buffer Requirements

71. What does it mean (in the regulations) that the RMP includes the NRCS plan? Who gets this plan and how do they get the plan? (This refers to page 4, item A-5 under 50-70-50 of the regulations.)
The regulations include a list of items considered to be components of an RMP, one item being “copies of nutrient management plans, any existing soil conservation plans from NRCS, RMPs, and any other conservation or water quality plan that includes the implementation of BMPs.” It is the responsibility of the RMP plan developer to obtain these plans (should they exist) either from the farmer or on behalf of the farmer. An Authorization for Release of Information form will be required to obtain USDA plans. A link to that form can be found at http://www.dcr.virginia.gov/soil_and_water/rmp.shtml under the header “Resources for plan developers”.
72. What are you referring to when you talk about NRCS soil loss?
RMPs must contain a soil conservation plan that achieves a maximum soil loss rate to “T” as defined by NRCS. Soil loss tolerance for a specific soil, also known as the T value, is the maximum average annual soil loss expressed as tons per acre per year that will permit current production levels to be maintained economically and indefinitely.
73. Why are buffers on intermittent streams, branches, creeks or water bodies not addressed compared to perennial streams or water bodies?
This is dictated in the Resource Management Plans law. Where forest or grass buffers are discussed in the law, they are associated with “cropland or specialty crops” or “hayland” and shall be required between such land uses and “perennial streams”. Therefore to be in compliance with the law and regulations, the buffer is only required adjacent to perennial waterbodies.
74. If the plan developer believes a stream to be non-perennial because it is not Blue Line, but the district thinks the stream should be perennial based on observation and knowledge, how does TRC react?
The District is the review authority and makes the final decision. The plan developer could revise the plan or seek an appeal in accordance with appeal procedures.
75. One of the presentation slides states that the RMP developer has the final say in determining a perennial (stream).
The District is the review authority and makes the final decision. The plan developer could revise the plan or seek an appeal in accordance with appeal procedures.
76. If the RMP addresses perennial streams in the plan, will it meet the needs and/or protection requirements for locality Bay Act plans?
Each locality establishes their own requirements for an RPA and RMA and perennial flow is only a component of this designation. Plan Developers are encouraged to understand the CBPA requirements in their localities and inform their clients should there be additional requirements above and beyond those of the RMP program.
77. Does the buffer of 35' include timber along stream?
A 35-foot buffer can include a forested buffer but may also be grass. “A forest or grass buffer between cropland and perennial streams shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the edge of the field to meet water quality objectives;”

78. What does a 35' buffer on hayland consist of – no cutting, fertilizer, trees, wildlife?
Fertilizer is not allowed on buffers included in RMP plans. Depending on whether the buffer is forested or herbaceous, mowing, some harvesting, and wildlife management is permitted. If participating in a conservation incentive program such as VACS or EQIP, there may be limitations for operations and management, specific to that program.
79. Is fertilizer application allowed on a hayland buffer?
Although there are several options available under the NRCS buffer specifications that allow various management options, under RMP requirements, in order to meet Chesapeake Bay Model definition of buffer, no fertilizer is allowed.
80. Why the 35' buffer for hayland?
The law is prescriptive on what land uses require setbacks and the regulations require a 35' buffer on hayland.
81. Regarding the minimum standards for pasture:
- Why no buffer requirement?
The law is prescriptive on what land uses require setbacks and does not require a setback on pasture.
 - Are there any requirements regarding the location of fence line with regard to edge of bank?
The regulations are not prescriptive as to the location of the stream exclusion system.
 - Any guidelines/requirements for management of area between fence line and edge of stream?
The regulations are not prescriptive as to the management of area between fence line and edge of stream.
82. Is stream exclusion fence that a landowner has installed at their own expense subject to NRCS standards and specifications? Or...just the fence in the plan?
No. Exclusion fencing does not have to meet NRCS standards; however, it must be permanent and provide year-round exclusion.
83. Do existing limited access sites on perennial streams (i.e. stream crossings and limited access watering sites) need to meet NRCS standards for an RMP?
Yes, any limited stream access on perennial streams need to meet NRCS standards that were applicable at the time of construction.
84. Does fencing along perennial streams in pasture have to have a buffer?
No.
85. A farmer has two fields separated by a 4' deep VDOT ditch that has been in place for quite some time. The fields are 2 ac. and 4 ac. respectively and flat, no slope. Ditches drain a VDOT road merging into this ditch, the ditch is no longer maintained by VDOT and has trees growing in it, seasonally there is water in it, and the ditch still functions despite the trees. Would this require a 35' fenced buffer?
The first step involves determining whether the ditch meets the definition of perennial stream in the regulations. If so, the next step involves determining the land use of the fields. This will determine the setback requirements. If perennial and croplands or hayland, a 35' buffer is required. If pasture, a fencing or exclusion system must be utilized that provides year-round livestock restriction to the streams. There is no buffer requirement associated with pasture.

86. The regulations (line 126) state that “The department shall annually evaluate such BMPs through decision support tools to determine whether they achieve the minimum standards and are authorized for use in the RMP program as a component of an RMP” *What is a decision support tool? Currently, the Bay Model and VAST tools.*

87. Regarding NMP implementation, is it required that BMPs in the NMP be included in the RMP?

The intent of the RMP program is for the RMP participant to implement their NMP.

Any practice that is required by nutrient management regulations, is required in the RMP.

Any BMP required by the NMP or the RMP must be implemented.

88. How much of a nutrient management plan is the RMP developer required to include?

A current nutrient management plan, containing all NMP components as identified in 4VAC50-85-130 must be submitted with the RMP. It is suggested that the NMP be submitted as an attachment to the RMP in the module. Until the planning module and NMP development software are integrated, if the NMP file exceeds the allowable file size of the RMP module, RMP developers have the option to submit a printed copy of the NMP to the SWCD.

Any submitted NMP must contain all of the land management units included in the RMP. If the NMP includes more land units than contained in the RMP, the RMP developer may submit the entire plan or only the portion of the NMP that pertains to the land management units included in the RMP. If a plan developer submits a plan that contains additional land management units than those contained in the RMP, the developer should provide a glossary to indicate which land management units in the submitted NMP relate to the RMP.

It is reasonable for a TRC to request one hard copy of the associated NMP.

Funding, RMP-1, and RMP-2 practices

89. As SWCD Board members spend time on RMPs who is footing the bill?

As stated in a May 27, 2014 letter from DCR Director Cristman, no increased funding is available in FY’ 15 for District operations and administration, including support of the RMP program. It has been suggested, however, that Districts monitor the time and dollars that they are expending related to the RMP program. These expenditures should be documented in the District’s budget template. Doing so will help DCR to substantiate a request for increased SWCD funding necessary for Districts to perform RMP-related duties.

90. Who is responsible for disbursing the RMP funds to districts and what mechanism will be used?

A procedure for District approval of RMP-1 and RMP-2 practices has been discussed at June/July FY15 cost-share trainings. The procedure will be provided more formally to CDCs to be distributed to all SWCDs.

91. Why is there no lifespan for an RMP-2?

A practice lifespan, by definition, is the number of years a practice must be maintained in accordance with program standards and specifications. In the case of RMP-2, the certificate itself has a lifespan

of nine years. The penalty for not maintaining the practice is essentially, loss of certificate, and consequentially, loss of certainty or “safe harbor” for a producer. Revised, VASWCB-approved versions of the RMP-1 spec also indicate that there is no lifespan for the RMP-1 practice.

92. Are RMP-1 or RMP-2 practices eligible for carryover?

An approved RMP-1 practice is eligible for carryover, but must be completed or cancelled by the close of the year following the year of approval. Although the RMP-2 was included in a list of practices eligible for carryover in the VACS manual guidance section; revised, VASWCB-approved VACS manual guidelines and RMP-2 practice spec state that the practice is NOT eligible for carryover. Carryover does not apply in the case of an RMP-2, as an applicant should not be approved for RMP-2 until the applicant has already received an Certificate of RMP Implementation.

93. If an SWCD staff wrote an RMP, can that individual receive the pass-thru cost-share payment? Can the SWCD receive the pass-thru payment?

Payment for both practices may be assigned to an individual or a business that provides the certified RMP developer services, and language regarding the proper 1099 IRS form to be issued in the case of a redirected payment, has been clarified. Such cost-share payments cannot be directly assigned by the participant to an SWCD. However, if an SWCD were to provide certified RMP developer services, in accordance with the Appropriations Act, the SWCD may request and receive a payment from a producer for the direct costs of services provided, not to exceed the amounts expended by the SWCD on these services. In this case, cost share would go to the producer, who would then pay the SWCD. Conversely, if an SWCD employee were to write an RMP on his/her own time, (if allowed by their District Board), RMP-1 or RMP-2 cost-share payments may be assigned directly to that employee by the participant. If payment is assigned to a recipient besides the applicant, the assigned recipient should receive a 1099-Misc form from the SWCD to report this income. However, if the applicant receives the cost share payment, they would receive a 1099-G.

94. Can you receive NM-1A in conjunction with RMP-1?

Yes, an applicant is eligible to apply for NM-1A in conjunction with RMP-1.

Language in the B.3.iii. portion of the NM-1A spec no longer applies. This was legacy language from a previous spec and will be corrected in the '16 version of the BMP manual.

95. If a person has received payment for RMP-1 but, prior to receiving a certificate of implementation, the WIP changes and the RMP no longer meets minimum standards, is that person eligible to receive RMP-1 again?

No. The FY '15 RMP-1 specs do not allow payment for revisions to an existing RMP unless there is a change of ownership and material changes to the farming operation.

96. Please clarify; does funding (per acre) go to districts, not the owner/operator?

RMP-1 and RMP-2 cost-share practices will make cost-share funding available for RMP development and RMP implementation. Payments will be made to the applicant, unless the applicant submits an “Assignment of Cost-Share Payment Authorization” form for the practice, assigning payment to another individual or business.” As stated in the response to question #87, the cost-share payment cannot be assigned to an SWCD. Payments are intended for the owner/operator and the cost-share may be used to cover the expenses for the services provided by the RMP developer. RMP plan review and implementation verification costs are intended to be covered by District Administration and Operations funding. Participation by the Districts in the Budget Template process will be important to identify the costs to enable DCR and the Districts to cooperatively seek additional funding from the General Assembly through the budget process.

97. Will money for plan development and implementation come from current cost-share money or will a new source of additional money be sought?
A CB and OCB pot were carved from FY2015 District cost-share allocations and federal grants funds secured for this purpose. Cost-share for RMP-1 and RMP-2 practices will be available in FY15 from set-aside VACS funds (\$60,000 in CB and \$100,000 OCB). RMP-1 and RMP-2 cost-share practices can be funded using these set-aside funds or with regular allocated VACS funds. When approving RMP-1 and RMP-2 practices and set-aside funds as the funding source, Districts should refer to the Procedure for District approval of RMP-1 and RMP-2 practices discussed in 2015 cost-share training.
98. Will VACS maintain a separate funding pool for BMP's in an RMP? If not, how will these be ranked against BMP's that are not for RMPs?
No. BMPs in an RMP can be funded with an individual District's cost-share allocation, but are subject to ranking and approval by that District Board.
99. If an RMP requires BMP installation, how is Cost-Share going to be dealt with? Cost-share is not guaranteed. Is there priority?
The FY '15 VACS Manual states that "Applications for cost-share or tax credit approval to implement BMPs that are included in an approved VA Resource Management Plan will receive priority consideration." Priority consideration is an eligibility or screening tool. This does not mean "highest" priority over other primary considerations in the latest cost-share policy. BMPs in RMPs are still subject to a District's secondary considerations and ranking process.
100. Will BMPs needed to implement an RMP take priority over other VACS BMPs? For example, buffer and cover crop needed to reach "t" versus stream exclusions taking District funds.
BMPs in an RMP are still subject to a District's secondary considerations and ranking process.
101. Districts have been told that they must give priority to BMPs included in an RMP. How should this be accomplished?
The following FY '15 VACS Manual states that "Applications for cost-share or tax credit approval to implement BMPs that are included in an approved VA Resource Management Plan will receive priority consideration." Priority consideration is an eligibility or screening tool. This does not mean "highest" priority over other primary considerations in the latest cost-share policy. BMPs in RMPs are still subject to a District's secondary considerations and ranking process.
102. Cost-Share priorities or guaranteed cost share for the BMPs outlined in the RMP may be a better incentive than 'safe harbor'. DCR guaranteed 100% cost share for the SL-6 so why can't you do priority CS for the RMP?
DCR is considering ways to prioritize BMPs in RMP plans. The Board's cost-share policy is expected to address this issue.
103. Will there be additional BMPs or cost-share options available with an RMP? Such as cost-share for precision ag, priority for RMP, cost share for additional BMPs not necessarily available with traditional NM plans or CS? Another example, if rates are cut for cover crop could full rates be available under the RMP or for multispecies cover crops?
Currently, there are no new BMP specifications written to address new or additional BMPs in RMPs.
104. If the farm is sold during the 9-year plan, how is the \$15/acre funds handled; does the recipient receive the full amount? Proportion? Would districts be required to refund \$15/acre?

Revised RMP-1 and RMP-2 cost-share practice specs approved by the VSWCB on August 6 for PY 2015 include rates of \$10/acre for RMP plan development and \$5/acre for RMP plan implementation. If a farm having an approved RMP and or Certificate of Implementation has a change in ownership or operator, RMP regulations allow and provide instructions for a transfer of the RMP and/or Certificate of Implementation. If the RMP is transferred and no material changes occur in the operation that require a revision to the RMP, the new owner/operator is not eligible to apply for an RMP-1. If there are material changes in the operation which do require a revision to the RMP, the new owner/operator may be eligible for the RMP-1 cost-share practice. Neither the RMP-1 nor the RMP-2 have a practice lifespan; therefore, if the previous owner/operator received cost-share funds for an RMP-1 and/or RMP-2 practice, there is no obligation to refund cost-share payment to the District or to transfer responsibility of the BMP to the new owner/operator.

105. How were the proposed rates developed and do the Districts believe these rates are reasonable?
Rates were based on DCR staff estimates of the workload involved. An RMP pilot study was conducted during spring 2014 to better assess adequate compensation for RMP development and verification. The rates of \$10/acre for RMP-1 Plan Development and RMP-2 Plan Implementation have been adopted by the Virginia Soil and Water Conservation Board.
106. How does training of local TRC and Districts relate to acres? Is funding for these to be separate?
Administrative and operational funding provided to Districts to establish and train their TRCs is not based on acreage and is different from cost-share funding available for plan development and/or implementation which may be based on acreage.
107. If there is a large increase in workload not only with the review of the RMP plan, staff resources/time, but also for the implementation of any required BMPs; will there be an equivalent increase in funding for the District in Technical Assistance funding and Cost Share allocation? Where will the money come from?
RMP funding options will be considered by the Virginia Soil and Water Conservation Board. The District Budget Template process will be the best way to identify administration and operational funding needs and will be used to make informed budget increase requests of the General Assembly to help support program implementation as participation grows.

FOIA/Privacy/Information Accessibility

108. Being as this RMP program will be adding software to the BMP tracking program, it opens up opportunity for private consultants to access the program. With this happening, how will the agency monitor the program to ensure the public doesn't get access to personal information within the program? It seems this opens up a lot of personal information issues, also opens up access for private planners to take advantage of other district programs such as NM-1 Ag and contract producers beforehand to try and get their business!
The modules will be developed with limited access; they will not allow access to the entire tracking program information.
109. Is the fact that a developer will be able to see that a plan exists on a given piece of property a violation of the FOIA exemption?
Plan developers will be able to see that a plan exists on a given piece of property, but personal and propriety information will be protected.

110. Regarding public access to any personal or proprietary information collected regarding an RMP, before information is released under the exception, is the person or people notified and given an opportunity to appeal the release?

No. The provision only allows for statistical or aggregate data to be released by DCR. Any other release of information will require permission from the person.

111. Regarding public notice” and advertising TRC meetings,

We are considering our Ag committee to be the TRC. If we are using an existing committee to review RMP’s, are we still required to advertise the meeting? Would advertising our Board of Directors meeting count?

All District committee meetings, including TRC meetings, must be advertised and minutes taken at the meetings because they are open meetings. All committees are public bodies in and of themselves and therefore, all committee meetings are to be considered public meetings regardless of their membership.

112. Are maps protected information? Are maps to be redacted from the packet in meetings?

Yes, maps are protected. Maps may be included in meeting packets; however, maps should be redacted to the extent possible to prevent disclosure of protected information.

113. Are only District **employees** allowed to see the maps related to a RMP submission to the District Technical Review Committee (TRC)? The SWCD **Directors** that serve on the TRC will need topographic, water features and other map data to adequately review and approve RMPs. Any TRC or Board member may see maps. Maps or any other protected information should not, however, be included in the TRC RMP review meeting packet as these packets are being taken into an open meeting.

114. Please clarify what level of redacting is needed for RMP review by the TRC and then later by the whole SWCD Board of Directors.

According to FOIA guidance, personal information (name, address, etc.) should be redacted. Any other identifying information should also be redacted; to the extent it is possible without compromising the TRC’s ability to evaluate the RMP.

115. Should TRC members have a signed 1619 agreement?

Yes, if the plan contains any information protected by section 1619 of the USDA Farm Bill.

116. May a TRC or Board member have access to a non-redacted RMP review packet?

Yes. A TRC or Board member can view any information included in the RMP.

Draft FOIA guidance suggests that all RMP packets should be redacted before being taken into an open meeting. This does not mean that a TRC member or a Board member cannot be provided with information necessary to review and/or approve the plan. It does mean that personal and proprietary information should not be included in a TRC committee meeting packet.

This issue may become resolved when the computer module is available. It is intended the TRC committee members will have a login to the module and will be able to view un-redacted plans and that the module will also have the functionality to provide a redacted plan to be include in the TRC meeting packet.

117. Is it a conflict of interest if I am a part-time District employee and during my “off time” I am a plan writer and while I am working for the District I am on the TRC?
It is up to the District to determine if this is a conflict; however, in any case in which the plan cannot be reviewed by your District, DCR would become the review authority.
118. If district already meets the 1st and 2nd plan developer criteria, what are the next steps in certification (i.e., test, training, etc.)?
Certification applies to an individual not an organization. For an individual to become certified, a completed application that outlines the individual’s qualifications must be submitted to and approved by DCR.
119. When will we have criteria for plan developer certification under option 2?
Criteria are specified in the regulations. A plan developer application is available on the DCR RMP webpage at http://www.dcr.virginia.gov/soil_and_water/rmp.shtml
120. Is a non-agricultural, Turf and Landscape Nutrient Manager Planner considered an equivalent to an Ag Nutrient Manager Planner?
No.
121. Will the RMP writer be responsible for actually writing nutrient management plans and conservation plans or will they be allowed to “collect” plans that already exist?
The RMP developer can include nutrient management and conservation plans done by others for use in the RMP. The RMP developer is certifying he has reviewed the plans and they meet the requirements. At that point, the nutrient management plan and the conservation plan become the responsibility of the RMP developer for the purposes of the RMP.
122. Will there be a RMP planner database?
Yes. The DCR website will contain a list of those certified planners who wish to be included on the list.

Modules

123. What is a module? (more specifically)
In this case, we are referring to a computer program or application. A conservation planning module and an RMP module that will assist with the development of these plans in an electronic format that can be directly submitted to the review authority are under development.
124. How will districts be involved in specification development and in module development?
Several district representatives are on the stakeholder committees for both the RMP module and Conservation Plan module development. These representatives are from the six District Areas and a representative from the VASWCD IT Committee. The committee will be providing information to the Districts in their Areas and soliciting feedback.
125. Will the list of (RMP and soil conservation module) committee members be shared for those not selected to serve, so that ideas can be shared with them for consideration for modules?
Yes, a list will be distributed to all Districts.
126. How will specifications for RMP module development be developed? What will be the contracting mechanism and process?

The Statement of Request will be submitted through the VITA process based on the work of the Stakeholder Advisory Committee and the Project Manager.

127. What is Standard format?

The RMP developer shall prepare the RMP in a format established by DCR or in a format approved by the Board as equivalent. The pilots are being conducted to develop a standard format. The modules, when developed, will provide the standard format.

128. Can Districts require that plans be in the module prior to review?

Yes. The official format approved by DCR is the module. For the 2014 plan development contract; however, the approved plans must be in the module prior to RMP certification.

129. What is the process for requesting logins/user roles?

Those who participated in RMP TRC module training in Spring 2015 will automatically be assigned a TRC user role. DCR will develop a process for requesting logins/user roles in the future.

130. Is a farm/field assessment required?

The module requires an assessment. There is no required format. A sample format has been provided to plan developers on the RMP website.

Other

131. Will RMP's also meet the whole farm assessments required by counties in regards to the Chesapeake Bay Preservation Act? In Bay areas, landowners are already required to have whole farm assessments conducted, and then this would be asked of them as well. Shouldn't all work together as farmer's time is very valuable?

While it would be beneficial for RMP developers to make the program participant aware of local ordinances, state laws, the Chesapeake Bay Act and Farm Bill requirements, the RMP law does not require that a developer do so; however, DCR staff is exploring with DEQ Chesapeake Bay Preservation Act staff whether either the Bay Act or RMP farm assessment, and/or resulting plans, could be formatted to serve both programs, saving farmers and district staff a considerable amount of time.

132. The RMP has been touted as the plan of all plans. If you implement the RMP, you receive "safe harbor". How will this plan deal with or take into account the local ordinances and state laws, such as the Bay Act or Farm Bill? If it does not take those into account, a farmer will end up with a multitude of plans, making things more confusing. They think they are taken care of, but they are not.

While it would be beneficial for RMP plan developers to make the program participant aware of local ordinances, state laws, the Chesapeake Bay Act and Farm Bill requirements, the RMP law does not require that a planner do so; however, DCR is looking into ways that the RMP assessment can work in conjunction with required Chesapeake Bay Act assessments. Discussions with NRCS on this matter will also continue.

133. Will an RMP be required for surface mining operations that could result in contamination of ground/surface water? If not, why?

No, the RMP is designed to cover agricultural cropland, hayland and pasture operations only. Mining is not covered by RMPs.

134. Why was DCR unable to meet the December 6, 2013 deadline?

DCR was overly optimistic in the original implementation date approved by the Board. A new date of July 1, 2014 was established by the Board and met by DCR.

135. Who markets?

DCR currently has a marketing committee working to promote the RMP program. Agriculture advocacy groups such as Virginia Farm Bureau, the Virginia Agribusiness Council, and the Virginia Small Grain Producers Association lobbied for this program and have committed to promote the program. Local Districts will be instrumental in marketing the program within their communities. Certified private RMP planners will also market the program.

136. Would Districts use this program to acknowledge participation and the environmental excellence it demonstrates, or do you see the program participants preferring anonymity?

Preference for recognition or anonymity will be up to the individual RMP certificate owner. If the owner/operator allows for his/her status as an RMP program participant to be disclosed, the District could recognize RMP program participants as such.

137. Farm Signage?

DCR has discussed the possibility of creating some sort of recognition for owners/operators who would like to advertise their status of RMP certification.

138. "Pilot Study" – Will there be a standard template to actually write or follow a format for the RMP's?

The pilots are being conducted to develop a standard format. The modules, when developed, will provide the standard format.

139. What are the VRMP SE-3 and VRMP SE-4 BMPs?

These practices were developed for the RMP program only.

The VRMP SE-3 Voluntary Stream Exclusion for RMP Program practice is a voluntary permanent, year-round fence or stream exclusion system, but not required to meet NRCS specifications. The VRMP SE-4 Voluntary Stream Crossings and Limited Access Points for RMP Program practice is a voluntary stream access and crossing, but this practice is required to meet NRCS specifications.